

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

**CSX TRANSPORTATION, INC.,
individually and on behalf of
NORFOLK & PORTSMOUTH BELT LINE
RAILROAD COMPANY,**

Plaintiff,

v.

Civil Action No. 2:18-cv-530-MSD-LRL

**NORFOLK SOUTHERN RAILWAY
COMPANY *et al.*,**

Defendants.

**MOTION TO DISMISS BY
NORFOLK AND PORTSMOUTH BELT LINE RAILROAD COMPANY**

Norfolk and Portsmouth Belt Line Railroad Company (the “Belt Line”), by counsel, pursuant to Rule 12(b)(6) and 49 U.S.C. § 10501(b), moves to dismiss all claims against it in this action for failure to state a claim upon which relief can be granted. As set forth in the accompanying Memorandum, all of the claims against the Belt Line fail as a matter of law, even accepting the factual allegations as true. The claims are also preempted or precluded by a trackage rights proceeding currently pending before the U.S. Surface Transportation Board (“STB”). The Belt Line therefore respectfully asks this Court to dismiss all claims against it with prejudice, or alternatively stay them until the conclusion of the STB proceeding, and grant it all other just relief.

Dated: November 27, 2018

NORFOLK AND PORTSMOUTH
BELT LINE RAILROAD COMPANY

By: /s/ James L. Chapman, IV

James L. Chapman, IV, VSB No. 21983
W. Ryan Snow, VSB No. 47423
Darius K. Davenport, VSB No. 74064
David C. Hartnett, VSB No. 80452
CRENSHAW, WARE & MARTIN, P.L.C.
150 W. Main Street, Suite 1500
Norfolk, Virginia 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735
jchapman@cwm-law.com
wrsnow@cwm-law.com
ddavenport@cwm-law.com
dhartnett@cwm-law.com
*Attorneys for Norfolk and Portsmouth Belt
Line Railroad Company*

CERTIFICATE OF SERVICE

I certify that on this 27th day of November 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a "Notice of Electronic Filing" to the following attorneys of record:

Robert W. McFarland, VSB No. 24021
Benjamin L. Hatch, VSB No. 70116
E. Rebecca Gantt, VSB No. 83180
McGuireWoods LLP
101 West Main Street, Suite 9000
Norfolk, Virginia 23510-1655
Telephone: (757) 640-3716
Facsimile: (757) 640-3930
rmcfarland@mcguirewoods.com
bhatch@mcguirewoods.com
rgantt@mcguirewoods.com
Attorneys for CSXT Transportation, Inc.

W. Edgar Spivey, VSB No. 29125
Clark J. Belote, VSB No. 87310
KAUFMAN & CANOLES, P.C.
150 W. Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3196
Facsimile: (888) 360-9092
wespivey@kaufcan.com
cjbelote@kaufcan.com
Attorneys for Cannon Moss

Craig T. Merritt, VSB No. 20281
Michael W. Smith, VSB No. 01125
Belinda D. Jones, VSB No. 72169
CHRISTIAN & BARTON, LLP
909 E. Main St., Suite 1200
Richmond, VA 23219
Telephone: (804) 697-4128
Facsimile: (804) 697-6128
cmerritt@cblaw.com
msmith@cblaw.com
bjones@cblaw.com
Attorneys for NS Railway Company

Hugh M. Fain, III, VSB No. 26494
M. F. Connell Mullins, Jr., VSB No. 47213
John M. Erbach, VSB No. 76695
SPOTTS FAIN PC
411 E. Franklin St.
Richmond, VA 23219
Telephone: (804) 697-2000
hfain@spottsfain.com
cmullins@spottsfain.com
jerbach@spottsfain.com
*Attorneys for Jerry Hall, Thomas Hurlbut,
and Philip Merilli*

/s/ James L. Chapman, IV
James L. Chapman, IV, VSB No. 21983
CRENSHAW, WARE & MARTIN, P.L.C.
150 W. Main Street, Suite 1500
Norfolk, Virginia 23510
Telephone: (757) 623-3000
Facsimile: (757) 623-5735
jchapman@cwmlaw.com